THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 22441 OF 2006

Dated 4th January, 2007

Between:

K.Veeraiah

… Petitioner

And

The Chairman and Managing Director,
Food Corporation of India
16-20, Barakhamba Lane,
New Delhi – 110001.

… Respondent

ORDER:

The petitioner, who was an employee of Food Corporation of India, a statutory body under the Food Corporations Act, 1964, has filed this writ petition seeking a writ of mandamus to declare the order passed by the respondent dated 13.10.2006 as illegal and arbitrary and for a consequential direction to the respondents to pay all consequential benefits including retirement benefits to the petitioner as per his claim in his representation dated 3.11.2005.

The facts, in brief, are as follows:

The petitioner originally jointed as Senior Assistant Manager (Engineering) in the year 1973 in the office of the Respondent. Thereafter, he was promoted to the post of Deputy Manager in the year 1977 and worked as such at different places of the respondent-Corporation. When he was working as Deputy Manager in the Regional Office of respondent-Corporation at Hyderabad, a trap was laid on 22.12.1995 by the C.B.I., Hyderabad alleging that he demanded an amount of Rs.10,000/- from a contractor. Consequent to registration of criminal case against the petitioner, investigation was taken up by the said agency by framing charges. Pending investigation into the charges framed against the petitioner by the C.B.I., he was placed under suspension by proceedings No VIG/21(238)/95, dated 27.12.1995. After completion of the investigation, the Central Bureau of Investigation had filed final report against the petitioner in the Competent Criminal Court for the alleged offences under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act and he was tried in C.C.No. 1 of 1997

on the file of the Court of the Special Judge for C.B.I. Cases, Hyderabad. After trial, by judgment dated 30.12.1998 rendered by the Court of Special Judge for C.B.I. Cases, Hyderabad, the petitioner was convicted for the offences under Sections 7 and 13(1) read with 13(2) of the Prevention of Corruption Act, 1988 and he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- for the offence under Section 7 of the Act and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and the sentences of imprisonment under both the counts were directed to run concurrently. Challenging the conviction recorded and sentences imposed by the Special Court, the petitioner preferred Criminal Appeal in Criminal Appeal No. 27 of 1999 before this Court. During the pendency of the Criminal Appeal, the petitioner attained the age of superannuation on 30.6.2003. However, subsequently, this Court has allowed the Criminal Appeal filed by the petitioner by judgment dated 27.7.2005 setting aside the convictions recorded and sentences imposed against the petitioner by the court of Special Judge for C.B.I. Cases, Hyderabad.

After conviction by the trial court, without conducting any disciplinary enquiry, the petitioner was dismissed from service by order dated 8.6.2000 in proceedings No. Vig./21(238)/95 in exercise of powers under Regulation 56 read with Regulation 63(1) of the FCI (Staff) Regulations, 1971.

In view of the allowing of Criminal Appeal No. 27 of 1999, by which, the petitioner was acquitted of the charges levelled, he made representations to the respondent claiming retirement benefits and pay and allowances for the period for which he was kept under suspension and the period he was not on duty, and, on the ground that in spite of repeated representations and reminders, respondent had not considered the relief sought for by him, the petitioner

approached this Court by filing Writ Petition No.17724 of 2005 and this court by way of interim orders in W.P.M.P.No.2223 of 2006 issued directions on 4.9.2006 to the respondent to pass appropriate orders on the representation of the petitioner dated 3.11.2005 within a period of six weeks thereafter taking into account the judgment of this court in Criminal Appeal No.27 of 1999 and communicate the same to the petitioner. Consequent to the direction of this court in W.P.M.P. No. 22237 of 2006 in W.P.No. 17724 of 2006 , the respondent has passed the impugned order dated 13.10.2006 in proceedings No. Vig.21/(238)/95 rejecting the representation of the petitioner dated 3.11.2005 on the ground that the Criminal Appeal filed by the petitioner was allowed by giving benefit of doubt in view of the prosecution witnesses, PWs 1, 2 and 3 turning hostile and as such, it is not an honourable acquittal. Further, it is observed that he was paid subsistence allowance before the dismissal from the date of suspension to the date of dismissal i.e. 8.6.2000. The relevant portion of the order impugned herein reads as follows:

> "AND WHEREAS I compliance of the direction of the Honourable High Court dated 4.9.06 in W.P.No.17724/06 the representation dated 3.11.2005 of Shri K.Veeraiah seeking relief in pursuance of the judgment of the Honourable High Court in Criminal Appeal No.27/1999 has been examined carefully along with all other relevant recordes of the case and applied my mind. On perusal of the Honourable High Court's order dated 27.7.05 in Criminal Appeal No.27/1999 it is observed that the conviction/sentences of the petitioner has been set aside by the Honourable High Court by giving benefit of doubt in view of the prosecution witnesses P.W.1, P.W.2 and PW3 turning hostile and thus the petitioner has not been acquitted honourably. I arrive ata conclusion that the conduct of the petitioner was not proper as is evident from the fact that the trap in question did take place and the alleged bribe money was recovered from the residence of the petitioner and the the prosecution established through the Chemical Examiner's evidence that the Sodium Carbonate test conducted on the hands of the petitioner pvoed positive. However, the order passed by the Honourble Andhra Pradesh High Court acquitting Shri K.Veeraiah, Ex.DM(Engg.) is recorded on grounds of technical flaw in the case and the acquittal cannot be regarded as honourable acquittal. In the evidence PW-1 who is the complainant, has deposed in his evidence even after turning hostile that he and the PW-2

had gone to the residence of the petitioner along with the gratification money of Rs.10,000/- and kept the same on the sofa in the room of the petitioner and covered it with news paper.

In view of the above position the preponderance of probability suggests that Shri K.Veeraiah is guilty of the alleged offences but for the witnesses turning hostile which led to acquittal from the Court.

Further, the dismissal orders were issued on 8-6-2000 and obviously thereafter no work was done by Shri K.Veeraiah for FCI till his date of superannuation i.e. 30th June 2003.

The sequence of events clearly establish fiar treatment on the part of FCI to Shri Veeraiah inasmuch as he was placed under suspension vide order dated 27.12.1995 on his being caught red handed by CBI. He was allowed subsistence allowance till dismissal on 8-6-2000.

THEREFORE, the representation dated 3.11.2005 made by Shri K.Veeraiah is devoid of any merit for any benefit related to his service and hence the request of the petitioner for allowing the benefits claimed in the said presentation cannot be acceded to.

Accordingly the representation of Shri K.Veeraiah, dated 3.11.2005 is rejected."

In this writ petition, it is the case of the petitioner that he was initially placed under suspension and subsequently dismissed from service in view of the special procedure contemplated under Regulation 63 of the Food Corporation of India (Staff) Regulations, 1971 (for short "the Regulations"), without initiating any independent enquiry on departmental side as per the Regulations and only on framing charges in the Criminal case and recording the conviction by the criminal court, and, inasmuch as his conviction was set aside, by this Court by allowing Criminal Appeal No.27 of 1999 filed by the petitioner, the petitioner is entitled for all the pay and allowances for the period covered by suspension and dismissal and all other consequential benefits by reviewing the order of dismissal. It is his case that once he is exonerated of the charges levelled against him by the competent appellate court, it is not open for the respondent to examine the grounds on which he was acquitted and he is entitled to be extended with all consequential benefits automatically.

The Deputy General Manager, Vigilance, Food

Corporation of India has filed counter affidavit on behalf of the respondent. It is stated in the counter affidavit that there are no grounds, at all to interfere with the impugned order dated 13.10.2006 as much as the said order is passed strictly in accordance with the Regulations framed by the Food Corporation of India. While taking an objection with regard to maintainability of the writ petition in view of the alternative remedy of appeal and review to the Board of Directors, as contemplated under Regulations 69 and 74 of the Regulations, it is stated that in view of lodging of FIR against the petitioner for the offences under Sections 7, 3(1)(d) and 3(2) of the Prevention of Corruption Act, the petitioner was suspended on 20.12.1995 and on conviction recorded by the trial court after trial by judgment dated 30.12.1998, he was dismissed from service on 8.6.2000 while treating the period of suspension as not on duty in terms of Regulation 66(8)(b) of the staff regulations.

It is stated in the representation dated 3.11.2005 filed by the petitioner that the petitioner has claimed payment of all the retirement benefits under Regulation 66(8)(a) of the Act, but, as much as he was not honourably acquitted by the criminal court, he is not entitled for pay and allowances under the said provision and as such, his case was considered under Regulation 66(8)(b) of the Regulations and the claim was rejected. But, however, it is also stated in the counter affidavit that the petitioner is entitled for Contributory Provident Fund and Group Linked Insurance Scheme benefits and expeditious steps are being taken by addressing the concerned officers for payment of the said amount. It is further stated that as the acquittal was not honourable, he is not entitled for any benefits and there are no grounds to interfere with the impugned order.

Heard Shri D.Prakash Reddy, learned Senior Counsel for the petitioner, and, Shri E.Manohar, learned Senior Counsel for

respondent-Corporation.

It is submitted by Shri D.Prakash Reddy, learned counsel appearing for the petitioner that though there is a procedure for imposing major penalty by conducting independent enquiry in the departmental proceedings, but in the instant case, no such steps were taken by the respondent against the petitioner before he attained the age of superannuation and he was dismissed by order dated 8.6.2000 only based on the conviction recorded by the competent criminal court. It is submitted that his conviction was set aside on Criminal Appeal No. 27 of 1999 being filed by the petitioner. Therefore, it is obligatory on the part of the respondents to review the order of dismissal and to pay all consequential pay and allowances which the petitioner would have been normally entitled to on attaining the age of superannuation by treating the period covered by suspension and dismissal as on duty. It is further submitted that once the petitioner is acquitted of the charges levelled against him by this court in view of the allowing of the criminal appeal filed by him, it is not open for the respondents to go into the merits of the judgment so as to deprive him of the benefits on the ground that the acquittal of the petitioner is not honourable one. Leaned counsel has placed reliance on a judgment of Punjab and Haryana High Court in the case of **Shashi Kumar v. Uttri Hry. Bijli Vitran Nigam**[1]**,** wherein, the Punjab and Haryana High Court, in identical situation, held that the petitioner therein was entitled to be reinstated with full back-wages. In the said judgment, it also observed that the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in the Criminal Jurisprudence. It is further held that it is not open to the parties concerned to bring in the concept of “honourable acquittal” or “full exoneration” so far as the judgment of the criminal court is

concerned. In a criminal trial, the accused is only called upon to meet the charge levelled against him and he may meet the charge (a) by showing that the prosecution case against him is not true; (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. Further reliance is also placed in the judgment of **Paul Anthony v. Bharat Gold Mines Limited**[2] in which case, the Apex court has considered as to whether departmental proceedings and proceedings in a criminal case launched on the basis of same set of facts can be continued simultaneously and held that there is no legal bar. But, however, it is stated that not only the charges must be grave but the case must involve complicated questions of law and fact and moreover, the advisability, desirability and propriety to proceed preliminarily in both the cases has to be determined in each case taking into consideration of the facts and circumstances of the case. Reliance is also placed on the judgment of the Supreme Court in **Union of India v. K.V.Janakiraman**[3] wherein the Apex court has held that when the employee is exonerated of the charges and when he is not even visited with penalty of Censure, he is entitled for all the benefits including salary, and, the principle of 'no work no pay' is not applicable in such a case.

On the other hand, it is submitted by Shri E.Manohar, learned Senior Counsel appearing for the respondent that the petitioner has claimed relief only under Section 66(8)(a) of the Regulations and from a perusal of the judgment of the criminal court, it is clear that he is not honourably acquitted on the merits of the case and his acquittal is based on benefit of doubt on account of some of the prosecution witnesses turning hostile, and, as such, he is not entitled for any benefit and his claim was considered under

Regulation 66 (8)(b) of the Regulations and was rejected. Learned counsel has relied on a judgment of the apex court in the case of **Reserve Bank of India v. Bhopal Singh Panchal**[4] wherein the Apex court had upheld the validity of Regulation 46(2) of the Reserve Bank of India (Staff) Regulation, 1948. In the above said case, when the suspension period was not treated as duty by not paying the full pay and allowances, the said action was upheld by the Apex Court. Further reliance is also placed on the judgment of the Apex Court dated 31.10.2006 in Civil Appeal No.4400 of 2005 wherein the apex court held that the back wages need not be granted automatically although the order of termination of the concerned workman was found to be invalid having regard to the fact that the appellant was paid retiral benefits. The learned Senior Counsel also submitted that the writ petition is not maintainable in view of the availability of alternative remedy of appeal and review.

Before I proceed further, I deem it appropriate to refer to the relevant provisions of the Regulations. The Food Corporation of India is a statutory body constituted under the Food Corporations Act, 1964 and comprehensive regulations are framed by it, which are titled as “The Food Corporation of India (Staff) Regulations, 1971” and the same were amended from time to time. The said regulations contain the General Conditions of Service, Conduct Regulations, Discipline and Appeal Regulations, Pay and Allowances etc. Chapter V/Section 5 deals with Discipline and Appeal regulations and Regulation 54 deals with penalties. Again, the penalties are divided into minor penalties and major penalties and the ‘dismissal from service’ is classified as a major penalty in the regulations. Regulation 56 deals with disciplinary authorities and Regulations 58 and 59 prescribe the procedure for imposing major penalties. Regulation 60 deals with the procedure for

imposing minor penalties. Apart from the same, there is special procedure in Regulation 63, which empowers the disciplinary authority to consider for passing appropriate orders in the circumstances prescribed therein, notwithstanding anything contained in the Regulations 58 to 62. Regulation 66 deals with suspension and Regulation 66 (1) © empowers the appointing authority or any other authority, to which, it is subordinate or the disciplinary authority to place an employee under suspension where a case against an employee in respect of any criminal offence needs any investigation, enquiry or trial.

In this case, a trap was laid on 22.12.1995 and consequent to registration of FIR, the petitioner was placed under suspension during the investigation and trial by order dated 27.12.1995 and the said suspension order continued all along till he was dismissed from service on 8.6.2000. Though it was open for the respondents to initiate independent disciplinary proceedings by conducting enquiry for imposing major penalty of dismissal, but no such proceedings were taken up and ultimately, the petitioner was dismissed from service vide proceedings dated 8.6.2000 passed in proceedings No. Vig./21(238)/95 solely based on the conviction recorded by the competent criminal court in C.C.No. 1 of 1997. It is relevant to note that he was dismissed from service invoking Regulation 63, which prescribes special procedure in certain cases enumerated therein. Section 66 (8) provides for grant of pay and allowances by the disciplinary, appellate or reviewing authority, as the case may be, in cases where suspension of an employee is held to be unjustified or not wholly justified or when an employee has been dismissed or suspended and reinstated. The said provision further empowers the disciplinary, appellate or reviewing authority, as the case may be, to grant full pay and allowances in case employee is honourably acquitted and if otherwise, such

proportion of pay and allowances as contemplated under Section 66 (8) (b) of the REgulations. From a reading of the various regulations, it is clear that an employee of the Corporation can be placed under suspension either on initiation of departmental proceedings or in cases where against employee, if any, criminal offence is under investigation, enquiry or trial. So far as the power of dismissal is concerned, it can be exercised either by following the procedure as contemplated under Regulations 58 and 59 of the Act or otherwise by following the special procedure contemplated under Regulation 63 of the FCI (Staff) Regulations in the event of conviction of employee on the criminal charge. Regulation 66 empowers an employer to keep under suspension where disciplinary proceedings against employee are contemplated or pending or in case where criminal offence is under investigation, enquiry or trial against employee apart from other situations. Regulation 66(8) of the regulations empowers the employer to grant the delinquent employee to pay full pay and allowances or such proportion of pay and allowances, when the suspension of employee is held to be unjustified or not wholly justified or when employee has been dismissed or suspended and reinstated. As much as, in this case, there were no departmental proceedings initiated and the petitioner was dismissed from service solely based on the conviction recorded by the competent criminal court, there is no other option for respondents except to review the order of dismissal. But, however, as much as the petitioner has attained the age of superannuation, he may not be entitled for reinstatement into service. But at the same time, it is obligatory on the part of the respondents to review the order of dismissal by taking into account the acquittal of the petitioner from the criminal charges levelled, in Criminal Appeal No.27 of 1999, and it is simply not open for the

respondents to reject by saying that he is not entitled for any pay and allowances as per Regulation 66(8)(a) of the Regulations on the ground that he was not honourably acquitted. Once the dismissal order is passed based on the conviction by the competent criminal court and when such conviction is set aside on the appeal preferred by the petitioner-employee, there is no option except to review the order of dismissal without further going into as to whether the acquittal was honourable or not, in the absence of any independent departmental proceedings. However, whether the petitioner is entitled for full pay and allowances or such proportion of pay and allowances is a matter, which is required to be considered having regard to the facts of each case. Though in the judgment of Punjab & Haryana High Court in **Shashi Kumar v. Uttri Hry. Bijli Vitran Nigam (1 supra)** relied on by the learned counsel for the petitioner**,** it was held that the acquittal from the criminal charge will entitle the employee for full backwages and it is not open for the authorities concerned to bring in the concept of honourable acquittal or not, but, however, there is a special procedure under Regulation 63 in this regard, which empowers the disciplinary to pass such orders as it deems fit in case of conviction on a criminal charge. It is also to be noted that in the judgment relied on by the learned counsel for respondent, Shri E.Manohar, in **Reserve Bank of India v. Bhopal Singh Panchal (4 supra)** the Honourable Supreme Court has upheld such an identical regulation. While it is true that in the representation made by the petitioner, he claimed full pay and allowances and all other wages under Regulation No.66(8)(a) of the Regulations, but, that itself will not disentitle the employer in granting the benefits to which the petitioner is otherwise entitled as per the very same set of regulations. In the impugned order, while stating that his claim was considered under Regulation No.66(8)(b), his representation is simply rejected on the ground that the

petitioner was allowed subsistence grant during the period of suspension. The pay and allowances mentioned in Regulation 66(8) cannot be deprived of only on the ground that the petitioner was paid subsistence grant during the period of suspension. Under Regulation 66(6) of the Regulations, an employee under suspension, or, deemed to have been placed under suspension is entitled to subsistence grant at ½ of the pay drawn by the employee concerned immediately on the date preceding the date of his suspension. As such, merely on the ground that the petitioner was paid subsistence allowance by itself is no ground to reject the claim of the petitioner totally. From a reading of the provisions of Regulation 66(8) (a) and (b), it is clear that the disciplinary authority can order grant of full pay and allowances in the case of honourable acquittal and such portion of the pay and allowances in the other cases. But, however, in this case, though the petitioner has claimed pay and allowances under Regulation 66(8)(a), but, at the same time, the respondent has not considered whether the petitioner is entitled for any such portion of pay and allowances as contemplated under Regulation 66(8)(b) of the Regulations, and it has simply rejected on the ground that the subsistence allowance is granted to the petitioner during the period of suspension. An employee placed under suspension is entitled for subsistence allowance even before the charges are proved during the period of suspension and the subsistence allowance, which is only a part of pay excluding allowances, cannot be treated as pay and allowances as provided under Regulation 66(8) of the Regulations. The claim for pay and allowances under Regulation 66(8) cannot simply be negatived on the ground that the petitioner was paid subsistence allowance. As much as the respondent has not considered this aspect as per the regulations in force with regard to the entitlement of the petitioner to

pay and allowances or part thereof and the order of dismissal is not reviewed after the acquittal of the petitioner in Criminal Appeal No.27 of 1999, I deem it appropriate to set aside the impugned order.

Though it is also the plea of the respondents that there is alternative remedy of appeal and review as per the regulations and the writ petition is not maintainable, but, as there is no factual dispute and the order of dismissal was solely passed on the conviction recorded by the criminal court without initiating any independent departmental proceedings, and, moreover, the petitioner had already attained the age of superannuation in the year 2000 itself, I do not think it is a fit case to drive the petitioner again to the appellate forum.

For the discussion aforementioned, the order impugned in the writ petition is set aside, and the respondent is directed to consider the claim of the petitioner afresh in the light of the observations made by this Court in this judgment and the Food Corporation of India (Staff) Regulations, 1971 and to pass appropriate orders within a period of eight weeks from the date of the receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. No costs.

4--1—2007 **R.SUBHASH REDDY, J.**

VR

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[1] 2005(1)SLR 659

[2] (1999) 3 SCC 679

[3] AIR 1991 SC 2010

[4] (1994) 1 SCC 541